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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,468

05/05/2006

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7590 03/03/2009  
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EXAMINER

NICHOLS II, ROBERT K

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

03/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,468	<b>Applicant(s)</b> SITEMAN, WALTER DENIS	
	<b>Examiner</b> ROBERT K. NICHOLS II	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,7 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8 is/are rejected.
- 7) ☒ Claim(s) 6 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/05/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species 2 – Figures 5-8 and 11 (claims 1, 2, 3, 6, 8 and 10) in the reply filed on 01/21/2009 is acknowledged.

The traversal is on the ground(s) that “Examiner fails to demonstrate Independent or Distinct”. This is not found persuasive because claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first, i.e. claim 5 recites limitations disclosed for Species 1 (a device serving to fend off a blow with a shaft including a spray component), while claims 4 and 9 recite limitations disclosed only for Species 3 (a device serving to assist one in walking disposed on ground having a spray component angled to target assailant's).

Furthermore, Rule 37 CFR 1.141 states that more than one species may be claimed provided the application also contains an allowable claim generic to all the claimed species and all the claims to the species in excess of one are written in dependent form (§1.75) or otherwise include all the limitations of the generic claim. Since this is clearly not the case as elaborated below, the requirement stands. The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

Claims 6 and 10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 6 and 10 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 2, 3, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Denison (US 5,709,635).**

Regarding claim 1, Denison discloses an instrument of defense wherein the handle portion 141 for an integral shaft portion 114 has a free end and a cavity (body channel) with a mouth opening outwardly from the free end thereof, for the reception of a spray dispensing unit 103 including a spray head mechanism with a depending fluid reservoir 131, the cavity and reservoir 131 having an axis of alignment and mating configuration and of a tolerance such that when aligned and mated under a press fit sufficient frictional gripping engagement is established therebetween and with the spray head mechanism sufficiently exposed at the cavity mouth and at the ready for actuation of same on demand (see figures 9, 10 and column 7, line 55 – column 8, line 6).

Regarding the limitation, "to anchor same against separation when transported or in combat," it is noted that "while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

Regarding claim 2, Denison discloses an instrument of defense including a handle portion 141 for an integral shaft portion 114, the handle portion 141 having a free end and a cavity (body channel) with a mouth opening outwardly from the free end thereof for the reception of a spray dispensing unit 103 including a spray head mechanism with a discharge orifice or nozzle 135 on one side, a displaceable spring-

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biased operating lever 134 disposed toward the other side and with a depending fluid reservoir 131, the cavity and reservoir 131 having an axis of alignment and a mating configuration and extent and of a tolerance such that when aligned and mated under a press fit sufficient frictional gripping engagement is established therebetween to anchor against separation and with the spray head mechanism disposed within the cavity mouth, the cavity mouth presenting a surrounding edge formation 102 with a suitable contour exposing the discharge orifice 135 on one side and with a slot 126 bordered by a ledge formation exposing the displaceable spring-biased operating lever 134 on the other side for displacement within the slot 126 to dispense fluid spray (see figures 9, 10 and 12, and column 8, line 66 – column 9, line 11).

Regarding claim 3, Denison discloses the cavity (body channel) mouth of the handle portion 141 opens outwardly in spaced apart relation to one end of the shaft portion 114 (see figure 9).

Regarding claim 8, Denison discloses the handle portion 141 and the shaft portion 114 have the configuration of a baton (being rod shaped) (see figure 9).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roberts (US 5,086,377), Anketell (US 3,635,374), Trudell (US 6,957,750), Oscarsson (US D469,498), Tuscher (US 5,941,629), Roach (US 5,875,945), Kostel et al. (US 2005/0092773), Kostal et al. (US 2002/0176254), Mariol

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(US 4,449,474), Johnson et al. (US 5,556,003) and Banks et al. (US 5,529,215) show other devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754